



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 18-094

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

a. The proposed rule does not appear to meet the standard that is required to submit a petition under s. 227.26 (4), Stats., for expedited repeal of an unauthorized rule. For purposes of the expedited repeal process, an “unauthorized rule” is a rule for which an agency lacks the authority to promulgate the rule due to the repeal or amendment of the law that previously authorized its promulgation.

This rule repeals s. Ins 2.02, which limits certain stock life insurance corporations’ profits and generally requires stock life insurance corporations to submit an agreement and annual filing. The rule summary notes that 2015 Wisconsin Act 90 modified state law to grant more discretion to life insurance companies’ boards of directors with respect to dividend policies. That change was codified in s. 632.62 (4) (b), Stats. However, although 2015 Wisconsin Act 90 arguably created a conflict between the statutes and at least portions of s. Ins 2.02, it does not appear to have repealed or amended any specific underlying rule promulgation authority.¹

¹ Although the proposed rule does not appear to meet the standard that is required for expedited repeal of an unauthorized rule, a proposed order under the permanent rule procedures to repeal s. Ins. 2.02 may be a rule for which the general public hearing requirement does not apply, because the rule “brings an existing rule into conformity with a statute that has been changed or enacted”. Additionally, in the annual report required to be submitted under s. 227.29, Stats., it appears that the office should identify s. Ins. 2.02 as a rule that is obsolete or is in conflict with a state statute, and describe any proposed actions to address the rule. [ss. 227.16 (2) (b) and 227.29 (1) (c) and (d) and (2) (a), Stats.]

b. In the rule summary's listing of statutory authority, references to ss. 227.26 (4) and 632.62 (1) (b), Stats., should be removed. Section 227.26 (4), Stats., provides a process and does not remove or confer rulemaking authority. Section 632.62 (1) (b), Stats., is the statute arguably in conflict with s. Ins. 2.02. The rule summary's listing of statutory authority should be revised to instead cite the specific statutory provision that granted rulemaking authority for the original rule, if applicable, or to cite general authority if there was no explicit authority and the rule was considered necessary to effectuate the purpose of administering stock insurer oversight. [s. 1.02 (2m) (a), Manual.]

c. The rule summary's explanation of agency authority should be updated to reflect any revisions made in accordance with the previous comment.

2. Form, Style and Placement in Administrative Code

a. The rule summary's listing of statutes interpreted should be revised to cite the specific statutory provision that was interpreted for administration and enforcement in the original rule. The citations to ss. 227.10 (2) and 227.26 (4), Stats., should be removed, as those provisions govern administrative rulemaking procedures and do not identify a subject matter that is administered by the agency. [s. 1.02 (2m) (a) and (b), Manual.]

b. In the rule summary, a heading and entry should be inserted for related statutes or rules. [ss. 227.14 (2) (a) 1. and 227.26 (4) (b) 1., Stats.]